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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 FRASER ROTCHFORD,

10 Plaintiff,

11 v.

12 CHRIS COULTER, et al.,

13 Defendants.  
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CASE NO. C19-5024BHS-TLF

ORDER AFFIRMING ORDER DECLINING  
TO RECUSE

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16 This matter is before the Court on Plaintiff's Affidavit [sic] of Prejudice with Cause  
17 which seeks United States Magistrate Judge Theresa L. Fricke's voluntary recusal. Dkt. #12.  
18 Judge Fricke declined to recuse herself and referred the matter to the Undersigned pursuant to  
19 this Court's Local Civil Rule 3(f). Dkt. #14. For the following reasons, the Undersigned affirms  
20 Judge Fricke's order.

21 Plaintiff's first complaint in this matter was deficient and Judge Fricke ordered Plaintiff  
22 to show cause why the complaint should not be dismissed because of those deficiencies. Dkt.  
23 #8. Judge Fricke provided Plaintiff a detailed explanation of those deficiencies and how to  
24 remedy them. *Id.* Plaintiff filed an amended complaint but did not follow the guidelines of Judge  
25 Fricke's prior order. Dkt. #9. Rather, Plaintiff advanced entirely new claims, not included in his  
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1 first complaint, against entirely new defendants. *Id.* The Court again ordered Plaintiff to show  
2 cause why his amended complaint should not be dismissed, and his entirely new claims pursued  
3 in a separate action. Dkt. #10. The Court again granted Plaintiff leave to salvage the allegations  
4 advanced in his first complaint. *Id.* Plaintiff filed a second amended complaint and at the same  
5 time filed a request that Judge Fricke recuse herself from the matter.

6 As a basis for recusal, Plaintiff alleges that he has:

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8 been witness to the Fricke art collection in New York City and learned of its  
9 premeditated and murderous provenence [sic] and having noted that works in the  
10 collection evidence a premeditated choice of ~~fam~~ works by famous artist  
representing their worst efforts and where the restroom at said museum had all the  
effrontery of what I imagine present in the gas chambers at Auschwitz . . . .

11 Dkt. #12 at 1. Plaintiff further indicates his frustration that the Court granted *in forma pauperis*  
12 status, which he himself requested, only to require Plaintiff to address manifest deficiencies in  
13 his complaints. *Id.* at 2–3. Lastly, Plaintiff seeks to rely on a “right to affidavit without cause  
14 said judge according to Washington State Court Rules.” *Id.* at 3.

15 Pursuant to 28 U.S.C. § 455(a), a “judge of the United States shall disqualify [herself] in  
16 any proceeding in which [her] impartiality might reasonably be questioned.” Federal judges also  
17 shall disqualify themselves in circumstances where they have “a personal bias or prejudice  
18 concerning a party, or personal knowledge of disputed evidentiary facts concerning the  
19 proceeding.” 28 U.S.C. § 455(b)(1). Further, section 144 of title 28 of the United States Code  
20 provides:  
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22 Whenever a party to any proceeding in a district court makes and files a timely  
23 and sufficient affidavit that the judge before whom the matter is pending has a  
24 personal bias or prejudice either against him or in favor of any adverse party, such  
25 judge shall proceed no further therein, but another judge shall be assigned to hear  
such proceeding.

26 The affidavit shall state the facts and the reasons for the belief that bias or  
27 prejudice exists, and shall be filed not less than ten days before the beginning of

1 the term at which the proceeding is to be heard, or good cause shall be shown for  
2 failure to file it within such time. A party may file only one such affidavit in any  
3 case. It shall be accompanied by a certificate of counsel of record stating that it  
4 is made in good faith.

5 28 U.S.C. § 144. Under both provisions, recusal of a federal judge is appropriate if “a reasonable  
6 person with knowledge of all the facts would conclude that the judge’s impartiality might  
7 reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir. 1993).  
8 This is an objective inquiry concerned with whether there is the appearance of bias, not whether  
9 there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1992); *United States*  
10 *v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980).

11 Plaintiff’s request fails to provide any reasonable basis for questioning Judge Fricke’s  
12 impartiality. Plaintiff advances vague allegations against Judge Fricke’s family name without  
13 relating them in any way to Judge Fricke herself. Additionally, Plaintiff’s request makes clear  
14 that he disagrees with Judge Fricke’s prior orders in this case. But, “a judge’s prior adverse  
15 ruling is not sufficient cause for recusal.” *United States v. Studley*, 783 F.2d 934, 939 (9th Cir.  
16 1986); *see also Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993) (“To warrant  
17 recusal, judicial bias must stem from an extrajudicial source.”). Plaintiff thus has advanced no  
18 basis warranting recusal.

19 Accordingly, the Court finds and ORDERS that Judge Fricke’s Order Declining to  
20 Recuse and Referring Plaintiff’s Motion to Recuse (Dkt. #14) is AFFIRMED. The Clerk shall  
21 provide a copy of this Order to Plaintiff.

22 DATED this 2 day of April, 2019.

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26 RICARDO S. MARTINEZ  
27 CHIEF UNITED STATES DISTRICT JUDGE